

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

FIRST-CLASS MAIL AND PERIODICALS SERVICE
STANDARD CHANGES, 2021

Docket No. N2021-1

**NOTICE OF THE UNITED STATES POSTAL SERVICE OF FILING OF LIBRARY
REFERENCES USPS-LR-2021-1-8 – 13 and USPS-LR-2021-1-NP5 – NP7 AND
APPLICATION FOR NON-PUBLIC TREATMENT
(May 17, 2021)**

The Postal Service hereby gives notice of filing of the following library references in this proceeding:

Public

<u>Title</u>	<u>Witness</u>
LR-N2021-1-8 End-to-End Periodicals Volume	Monteith
LR-N2021-1-9 18 Percent Input	Monteith
LR-N2021-1-10 BHT Surveys	Monteith
LR-N2021-1-11 Calculating Air to Surface Savings	Whiteman
LR-N2021-1-12 Mail Piece Volume by Service Standard and Drivetime	Cintron
LR-N2021-1-13 Material Provided in Response to MPA Interrogatory MPA/USPS-T3-1	Hagenstein

Non-Public

<u>Title</u>	<u>Witness</u>
LR-N2021-1-NP5 BHT Surveys	Monteith
LR-N2021-1-NP6 Calculating Air to Surface Savings	Whiteman
LR-N2021-1-NP7 Hagenstein Material in Response to POIR 1	Hagenstein

The nonpublic material consists of nonpublic responses to Presiding Officer's Information Request No. 1. To the extent applicable, the Postal Service incorporates by reference its original application for nonpublic treatment filed in conjunction with its original notice of filing of library references on April 21, 2021. An application for non-public treatment and protective conditions for materials not otherwise covered by the original application is attached to this Notice.

The materials filed with the Library References listed above all fall within Category 4
(material provided in response to discovery).

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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**APPLICATION OF THE UNITED STATES POSTAL SERVICE
FOR NON-PUBLIC TREATMENT**

In accordance with 39 C.F.R. § 3011.201, the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed under seal with the Commission. The materials covered by this application consist of documents and information produced in response to Presiding Officer's Information Request. The Postal Service seeks non-public treatment of fourteen documents titled "Brand Health Tracker," which are quarterly summaries of market research concerning various Postal Service products and services and the narrative response relating to those documents (USPS-LR-N2021-1-NP5). These materials contain competitively sensitive information regarding the Postal Service's competitors, its market research, its products and services, including the Informed Delivery feature, and consumers' opinions about the delivery of packages during the COVID-19 pandemic.¹ The documents also contain personally identifiable information.

The Postal Service also seeks non-public treatment of certain information in workpapers filed in connection with question 16 (USPS-LR-N2021-1-NP6). Some of the information relates to the average cost of transportation on the FedEx Day network and the volume and weight of mail tendered to that supplier. This information is commercially sensitive information relating to the Postal Service's purchase of transportation from a single vendor.

¹ Additionally, the redacted information concerns competitive products that are not the subject of this proceeding. As the Commission has observed, "[m]ost materials filed by the Postal Service with the Commission are commercial in nature, and for the Commission to demand information from the Postal Service, that information must be in furtherance of the Commission's duties under title 39." Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, PRC Docket No. RM2008-1 (Mar. 20, 2009), at 11.

The Postal Service also seeks non-public treatment of the information filed in connection with question 25 (USPS-LR-N2021-1-NP7). This information is commercially sensitive information relating to international volume, revenues, costs, service performance, and bonuses/supplementary remunerations.

The Postal Service provides below the information required by 39 C.F.R. § 3011.201(b)(1)-(8).

(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials

The materials designated as non-public contain commercial information about the performance of competitive products and the cost of an individual supply contract that under good business practice would not be disclosed publicly. Public disclosure of this information would allow the Postal Service's competitors to use it to their advantage in competing against the Postal Service. In the Postal Service's view, this information is exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. §§ 552(b)(3).²

Further, the non-public Brand Health Tracker material also consists of personally identifiable information protected under 5 U.S.C. § 552(b)(6). This exemption protects information about individuals in "personnel and medical and similar files" when the disclosure of such information would constitute a clearly unwarranted invasion of

² In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to audit activities, collective bargaining, privacy, testing and examination of employees, privacy, deliberative process, and law enforcement interests. Order No. 4679, Order Adopting Final Rules Relating to Non-Public Information, PRC Docket No. RM2018-3 (June 27, 2018) at 16 (reconfirming that the adopted final rules do not alter this long-standing practice); Order No. 194 at 11.

personal privacy. Such information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 552(b)(6) and should not be publicly disclosed.

(2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of this section (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual.

The Postal Service has a proprietary interest in the information contained within the non-public materials. The Postal Service designates Amanda Hamilton to accept actual notice of a motion related to the non-public material or notice of the pendency of a subpoena or order requiring production of the materials. Ms. Hamilton's email address is Amanda.J.Hamilton@usps.gov and her telephone number is 202-268-4559.

(3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the information at issue, would allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials are non-public.

Most of the non-public information in USPS-LR-N2021-1-NP5 relates to the Postal Service's confidential market research concerning its products and service. One example is Informed Delivery, a service the Postal Service offers customers that allows them to preview the mail being delivered to their mailboxes. Another example is non-public information relates to comparisons of the overall consumer perception of the Postal Service as compared to its major competitors. Yet, another example is market research concerning consumer's opinions regarding the Postal Service's delivery of packages during the COVID-19 pandemic.

As for USPS-LR-N2021-1-NP6, the non-public information relates specifically to the volume, pounds, cubic feet, and cost of mail, including competitive products, transported by a single transportation provider.

As for USPS-LR-N2021-NP7, the non-public information relates specifically to the volume, revenues, costs, service performance, and bonuses/supplementary remunerations.

(4) Particular identification of the nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure.

The Postal Service would likely suffer commercial harm if the non-public information was publicly available. The Postal Service does not believe that it would be disclosed under good business practice. In this regard, the Postal Service is not aware of any business with which it competes (or in any other commercial enterprise), either within industries engaged in the carriage and delivery of materials and hard copy messages, or those engaged in communications generally, that would disclose publicly information and data of comparable nature at a disaggregated level and with the details furnished here.

The market research regarding usage, awareness, and effectiveness (USPS-LR-N2021-1-NP5) would give competitors insight into customer usage and demographic information. Competitors could use that information to their advantage to identify and market to segments of the market that are less engaged with the Postal Service. This could lead to contribution loss for the Postal Service in competitive products (as well as market dominant products).

Market research that compares customer opinions of the Postal Service against its major competitors would harm the Postal Service by providing competitors with free data regarding consumers' perceptions of them.

Finally, market research concerning consumer's opinions regarding the Postal Service's delivery of packages during COVID-19 is critical commercial information because the mail and delivery of packages is a category of postal products for which

private sector carriers offer competitive services. Public release of this information would allow the Postal Service's competitors to use research conducted and paid for by the Postal Service to understand consumers' sensitivities regarding package delivery during the COVID-19 pandemic.

As for USPS-LR-N2021-1-NP6, the data and information considered to be non-public consists of transportation cost, weight, density, and volume information. The Postal Service, which currently engages and will continue to engage in contracts for air and surface transportation services, has a strong interest in being able to obtain the best prices possible. Revealing the Postal Service's cost, weight, density, and volume data with respect to certain transportation suppliers has the potential for interfering with the procurement process and defeating the Postal Service's interest in obtaining beneficial arrangements. Transportation suppliers could potentially use the transportation cost, weight, density, and volume information to seek higher prices for the services they provide.

As for USPS-LR-N2021-1-NP7, the data and information considered to be non-public consists of volume, revenues, costs, service performance, and bonuses/supplementary remunerations for Outbound First-Class Mail International and Inbound Letter Post. Revealing this information would allow foreign postal operators to seek higher prices for the services they provide.

(5) At least one specific hypothetical, illustrative example of each alleged harm.

Harm: Competitors use market research regarding usage, awareness, and effectiveness to target and divert certain market segments from the Postal Service, leading to contribution loss for the Postal Service in competitive products (as well as market dominant products).

Hypothetical: A competitor determines from the market research that a select

market segment is not engaged with the Postal Service and targets marketing efforts at diverting that category of customers.

Harm: Competitors learn the Postal Service's perceptions of them without having had to invest resources in market research.

Hypothetical: A competitor reviews the information concerning consumers' attitudes about it or other market participants and gains valuable market intelligence without having to make an investment in research.

Harm: Competitors use information about consumers' attitudes toward package delivery during COVID-19 to understand consumers' sensitivities regarding package delivery without having to invest in market research.

Hypothetical: A competitor uses research conducted by the Postal Service to revise, without payment of the market research costs, its delivery protocol to directly address consumers' concerns and adopts procedures regarding face coverings, distances maintained between delivery person and customer, use of gloves, or other measures that may improve the competitors' standing with customers.

Harm: Public disclosure of transportation costs for certain suppliers, together with the volume, weight, and density information, would provide transportation suppliers extraordinary negotiating power.

Hypothetical: An air transportation supplier or its representative obtains a copy of the unredacted version of Library Reference USPS-LR-N2021-1-NP6. The supplier has already been in negotiations to provide air transportation services to the Postal Service and has determined an appropriate price to fit the supplier's cost structure. The supplier sees the Postal Service's average transportation costs and uses that information, in combination with volume, weight, and density information as a justification for pricing

demands in negotiations. The Postal Service's ability to negotiate the best value from the bargain suffers as a result. The same scenario would apply to a transportation supplier's ability to position itself in future, rather than ongoing, negotiations with the Postal Service, based on what the supplier knows, or believes it knows, about what the Postal Service is willing to pay.

Harm: Public disclosure of volume, revenues, costs, service performance, and bonuses/supplementary remunerations for Outbound First-Class Mail International and Inbound Letter Post would provide FPOs with extraordinary negotiating power.

Hypothetical: An FPO obtains a copy of the unredacted information in Library Reference USPS-LR-N2021-1-NP7. The FPO can use the data contained therein as leverage over the Postal Service in negotiations; and the Postal Service's ability to negotiate best value from the bargain suffers as a result.

(6) The extent of protection from public disclosure deemed to be necessary.

The Postal Service maintains that the portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant markets, as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service should not be provided access to the non-public materials.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless otherwise provided by the Commission. 39 C.F.R. § 3011.401(a). The Postal Service seeks full protection during this time period and thereafter.

(8) Any other factors or reasons relevant to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.